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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/807,496

03/23/2004

Michael Saigh

AUTOCART CIP 1

4385

76277

7590

12/23/2009

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EXAMINER

SHAPIRO, JEFFERY A

ART UNIT

PAPER NUMBER

3653

MAIL DATE

DELIVERY MODE

12/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,496	<b>Applicant(s)</b> SAIGH ET AL.	
	<b>Examiner</b> JEFFREY A. SHAPIRO	<b>Art Unit</b> 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) ☒ Claim(s) 44-45, 47-51, 57, 59-70, 79, 98-103, 109-110, 112-117, 119-125, 127-129 and 131 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44-45, 47-51, 57, 59-70, 79, 98-103, 109-110, 112-117, 119-125, 127-129 and 131 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 44-51, 56-57, 59-61, 66-76, 80-82, 84-85, 91-104, 109, 110, 112-114, and 119-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kipp (US 5,890,136) in view of Domain et al (US 5,158,155) and further in view of Swartz (US 5,923,735).

Regarding Claims 44, 80, 85, 96, 99, 100, 124-127 and 132, Kipp discloses a structural facility (16), as illustrated in figure 5, that receives and distributes items, including a central order processing portion, a plurality of drive-through pick up areas (14), a central, i.e., core computer (20) that communicates with customers through communications system (18), mentioned at col. 4, line 65-col. 5, line 20. Kipp also discloses sorting materials by a material's handling system in communication with a central order computer at figures 1 and 2. Kipp also discloses i.) shipping or delivering the order to the customer or ii) sending the order to a designated pickup location, as mentioned at col. 1, lines 32-40. Kipp also discloses directing the ordered items to a particular pickup area (14) as illustrated at figures 1-5. Note that Kipp updates inventory data in inventory database (36) through inventory control sensor (42). Kipp also

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discloses tracking by computer system (20), customer information including articles ordered by means of elements (26, 28, 30, 32, 34 and 36), as illustrated at figure 1.

Further regarding Claim 128, note that Kipp at col. 5, lines 12-34 recites preordering communication means in the form of implementing communication over a data network or a telephone network.

Regarding Claim 129 and 131, Kipp discloses verifying customer identification, order information and payment processing at col. 5, lines 12-34. Note that the world wide web, a data network and a phone network all incorporate remote computer devices.

Regarding Claim 44, 99 and 124, Kipp does not expressly disclose, but Domain discloses a computer-controlled traffic optimization system for the purpose of optimizing traffic flow through a drive-up retail facility. See Domain, col. 5, lines 40-61.

Regarding Claim 44, 99 and 124, Kipp does not expressly disclose, but Domain discloses processing commercial, retail classified goods and services at col. 2, lines 57-63.

Regarding Claim 45, Domain further discloses plural staging lanes (14) in communication with the core computer system.

Regarding Claims 44, 45, 99 and 124, At the time of the invention, it would have been obvious to one of ordinary skill in the art to have added a computer-controlled traffic optimization system, as taught by Domain, in Kipp's drive-through retail facility, for the purpose of optimizing traffic.

Regarding Claims 44, 45, 99 and 124, Kipp does not expressly disclose, but Swartz discloses tracking customer order histories and ordering trends and predicting future orders of the customer at col. 3, lines 33-37 and col. 3, line 38-col. 4, line 25.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have kept track of customer order histories and to have predicted customer lists for the purpose of satisfying the customer by providing accurate real-time product information. Note also that Swartz discloses keeping track of inventory as well as consumer preferences and market trends at col. 4, lines 19-24.

Regarding Claims 46, 71, 128, Kipp discloses an order placement, i.e., preordering communication means (18), mentioned at col. 4, line 65-col. 5, line 20, and delivery station (24), described at col. 6, lines 39-col. 7, lines 1-7.

Regarding Claim 47, note that Kipp's station (24) receives items on conveyor (44).

Regarding Claims 48, 49, 73 and 74, 97, 101, Kipp's station (24) communicates by hardwired or wireless means with the central (core) computer. See Kipp at col. 4, line 62-col. 5, line 25.

Regarding Claims 50, 75, 103, note that Kipp's communication means includes pre-ordering/sale information. See Kipp at col. 7, lines 30-40.

Regarding Claims 51, 56, 57, 76, 81, 82, 98, 104, 109, 110, Kipp's pre-ordering means verifies customer orders and identification, as mentioned at col. 6, lines 25-29 and 45-63. Note that biometrics are disclosed at lines 45-47.

Regarding Claims 59, 60, 61, 102, 112, 113, 114, official notice is taken that it would have been obvious to incorporate an area to handle special goods, provide refunds, receive returns or handle customer queries/customer service, as typical retail establishments are well-known to have such an area.

Regarding Claims 66-70, 91-95, 119-123, note that Kipp's structural facility is "adapted" to be attached to any other desired structure, such as a strip mall, box store, outdoor mall, indoor mall or other structure.

Regarding Claim 72, note that service items are considered functional equivalents of other items. Regardless of the item, Kipp's apparatus is adapted to handle service or other items.

3. Claims 62-64, 115-117, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kipp (US 5,890,136) in view of Domain et al (US 5,158,155) and further in view of Swartz (US 5,923,735) and still further in view of Dickson (US 6,810,304 B1).

Kipp discloses the drive-through retail structure as described above.

Kipp does not expressly disclose, but Dickson discloses a food area (22) with a food prep area (40), as illustrated in figure 1 of Dickson, for the purpose of expanding retail offerings in order to increase sales and thus profits.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have added a food area with food prep area, such as a restaurant, as taught by Dickson, in Kipp's drive-through retail facility, for the purpose of expanding retail offerings and increasing profits.

Official notice is taken that such food areas require refrigerated areas as well as environmental controls, for example.

***Response to Arguments***

4. Applicant's arguments with respect to Claims 44-45, 47-51, 57, 59-70, 79, 98-103, 109-110, 112-117, 119-125, 127-129 and 131 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY A. SHAPIRO whose telephone number is

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(571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Shapiro/  
Primary Examiner, Art Unit 3653

December 20, 2009